

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN C. VINCENT,

Plaintiff,

vs.

COMMISSIONER OF INTERNAL
REVENUE,

Defendant.

2:05-CV-0865-RCJ-LRL

ORDER

This matter coming before the Court on Defendant's Motion for Summary Judgment (#10). The Court has considered the Motion, the pleadings on file, and oral argument on behalf of all parties. IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment (#10) is *granted*.

BACKGROUND

On January 5, 2006, Plaintiff John C. Vincent filed the Complaint (#4) in this case, in which Plaintiff asks the Court to set aside the determination of the Internal Revenue Service ("IRS") that Plaintiff was liable for frivolous tax return penalties under 26 U.S.C. § 6330. The penalties in question resulted from Plaintiff's federal income tax returns for the years 1989–1992, 1994, and 1996–2002. Plaintiff entered zeroes on all the lines of the returns which reflected income or tax due to the government. Plaintiff attached statements to the returns setting forth arguments as to why he did not believe that the federal income tax laws applied to him.

1 process determination was erroneous, either procedurally or substantively. Second, the Court
2 must determine whether Plaintiff has raised a triable issue of fact regarding the
3 appropriateness of the frivolous return penalties levied by the IRS against Plaintiff.

4 **I. Summary Judgment Standard**

5 The purpose of summary judgment is to avoid unnecessary trials when there is no
6 dispute as to the material facts before the court. *Northwest Motorcycle Ass'n v. U.S. Dep't of*
7 *Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). The moving party is entitled to summary
8 judgment when the evidence on record establishes that there is no genuine issue of material
9 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©);
10 *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). Where reasonable minds could differ
11 on the material facts at issue, summary judgment is not appropriate. *Warren v. City of*
12 *Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995).

14 The moving party bears the burden of informing the court of the basis for its motion,
15 together with evidence demonstrating the absence of any genuine issue of material fact.
16 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its
17 burden, the party opposing the motion may not rest upon the mere allegations or denials of
18 his pleadings, but must set forth specific facts showing that there is a genuine issue for trial.
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

20 **II. Statutory Basis for Collection Due Process Hearing**

21 In 1998, Congress enacted 26 U.S.C. § 6330 as part of the IRS Restructuring and
22 Reform Act of 1998, Pub. L. No. 105-206. The statute provides that, prior to the issuance of
23 an administrative tax levy, the IRS must give a taxpayer notice of an opportunity for a
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1 Collection Due Process Hearing before the IRS Office of Appeals. 26 U.S.C. §6330(a), (b).
2 Pursuant to 26 U.S.C. §6330(a)(2) and (a)(3)(B), a taxpayer must request a Collection Due
3 Process Hearing within 30 days of the date notice is given regarding his right to that hearing.
4 As set forth above, Plaintiff received notice of the IRS's proposed levy, along with notice of
5 the right to a Collection Due Process Hearing, and made a written demand for the hearing.

6 Section 6330(c)(2)(A) describes the matters that may properly be raised by a taxpayer
7 at a Collection Due Process Hearing. These matters include spousal defenses, the
8 appropriateness of the Commissioner's intended collection action, and possible alternative
9 means of collection. *See Goza v. Commissioner*, 114 T.C. 176, 180 (2000).

10 After the Collection Due Process Hearing, the taxpayer may appeal the IRS's
11 determination to an appropriate court. See 26 U.S.C. § 6330(d). When the validity of the tax
12 liability was properly at issue in the appeals hearing, the court conducts a *de novo* review of
13 the amount of the tax liability. *See Goza*, 114 T.C. at 180.

14 **III. Plaintiff's Arguments**

15 **A. Collection Due Process Hearing**

16 Plaintiff claims that the IRS's collection due process determination was erroneous
17 because the IRS appeals officer relied solely on IRS records, including Forms 4340
18 (Certificates of Assessments and Payments) in determining the adequacy of the
19 administrative proceedings. This argument is without legal merit. The United States Tax
20 Court has repeatedly recognized that IRS Forms 4340 are a sufficient basis for determining
21 the adequacy of administrative procedures in making an assessment. *See, e.g., Davis v.*
22 *Commissioner*, 115 T.C. 35, 40 (2000); *see also Huff v. United States*, 10 F.3d 1440, 1445
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1 (9th Cir. 1993) (recognizing that Forms 4340 constitute presumptive proof of a valid
2 assessment). In this case, the record demonstrates that the IRS appeals officer relied on
3 Forms 4340 to determine that the assessment was proper and that the appropriate
4 administrative procedures were met. Therefore, there is no triable issue of fact as to whether
5 the IRS erred in its collection due process determination.

6 **B. Frivolous Return Penalty**

7 Plaintiff also asserts that the return penalties levied against him were inappropriate
8 because his federal income tax returns were not frivolous. Under 26 U.S.C. § 6702, a
9 frivolous return penalty is appropriate whenever two conditions are met. First, a taxpayer
10 must file what purports to be a return, but which does not contain information on which the
11 substantial correctness of the taxpayer's self-assessment may be judged, or which contains
12 information that on its face indicates that the self-assessment is substantially incorrect. *See*
13 26 U.S.C. § 6702. Second, the filing must be based on a frivolous argument, or a desire to
14 delay or impede the administration of federal income tax laws. *Id.*

15 In this case, Plaintiff filed federal income tax returns indicating that he received no
16 taxable income, although he admitted that he received wages. Plaintiff also attached a
17 statement to his tax returns in which he set forth his argument for why his wages did not
18 constitute "income," and why the federal income tax laws were inapplicable to him. The
19 Ninth Circuit has rejected the "wages are not income" argument as frivolous. *See, e.g., Olsen*
20 *v. United States*, 760 F.2d 1003, 1005 (9th Cir. 1985); *see also Rodriguez v. Commissioner*,
21 T.C. Memo. 2003-105; *Rodriguez v. Commissioner*, T.C. Memo. 2005-12. Plaintiff's income
22 tax returns, along with the accompanying statements, establish that Plaintiff's tax self-
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1 assessment was substantially incorrect and that his false returns were based on a frivolous
2 attempt to argue that the federal tax laws did not apply to his wages. Accordingly, Plaintiff
3 cannot show a genuine issue of material fact for trial as to whether he was subject to the
4 IRS's frivolous return penalties. *See* 26 U.S.C. § 6702

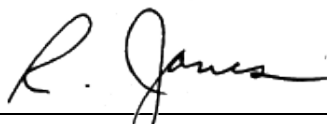
5 **IV. Local Rule 7-2(d)**

6 In addition, Plaintiff did not file a timely written response to Defendant's Motion for
7 Summary Judgment (#10). According to Local Rule 7-2(d), "[t]he failure of an opposing
8 party to file points and authorities in response to any motion shall constitute a consent to the
9 granting of the motion." Therefore, summary judgment is appropriate on these grounds as
10 well.
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12 **CONCLUSION**

13 Therefore, IT IS HEREBY ORDERED that Defendant's Motion for Summary
14 Judgment (#10) is *granted*.
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18 DATED: July 19, 2006.
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25 ROBERT C. JONES
UNITED STATES DISTRICT JUDGE